

HELENA GARVIN)
)
 Plaintiff,)
)
 v.) C.A. No. N18C-02-072 CEB
)
 WILCOX LANDSCAPING,)
)
 Defendant.)

¹ Defendant's Motion for Summary Judgment at 1.

was negligent by not removing accumulated ice and snow from the sidewalk.² She alleges that Defendant's negligence caused her slip and fall and resultant injuries.³

3. As developed in discovery, on February 15, 2016, the Plaintiff heard from a co-worker that it was icy outside.⁴ She went to her car to allow it a few minutes to warm up before ending her shift at 9 pm.⁵ As Plaintiff exited the front of the building, at or around 8:50 pm, she felt that it was raining.⁶ She also noticed ice on the sidewalk.⁷ Upon taking a few steps out of the building, she slipped, fell and after a brief period of unconsciousness, was awakened by the rain hitting her face.⁸ Plaintiff's own weather data shows a continuous period of light snow, fog and freezing rain from mid-morning until late night on the evening Plaintiff fell.⁹

² Complaint at 1.

³ *Id.*

⁴ Deposition of Helena L. Garvin, at 65.

⁵ *Id.* at 56, 57.

⁶ *Id.* at 65 (Q: It was actively raining when you went outside, right?

A: Yes.

Q: Was it actively raining when you fell?

A: Yes.).

⁷ *Id.* at 66.

⁸ *Id.* 67.

⁹ Plaintiff's Response, Ex. B.

4. A commercial party generally has an affirmative duty to make its premises safe for business invitees.¹⁰ A business owner must also keep the premises safe from accumulations of snow and ice.¹¹ The continuing storm doctrine suspends this duty and permits the owner to wait a reasonable time after the storm ends before removing ice and snow from an entranceway, platform or steps.¹² The policy behind this exception is that due to rapidly changing weather conditions during a storm, it is inexpedient and impracticable to take earlier action.¹³

5. The Defendant argues that it is entitled to judgment as a matter of law because the continuing storm doctrine suspended its duty to make the premises safe until a reasonable time elapsed after the storm ended.¹⁴

6. Plaintiff argues that the continuing storm doctrine only raises contested issues of fact and the contested facts should be determined by a jury.¹⁵ Plaintiff

¹⁰ *Woods v. Prices Corner Shopping Center Merchants Assoc.*, 541 A.2d 574, 577 (Del.Super.1988).

¹¹ *Monroe Park Apts. Corp. v. Bennett*, 232 A.2d 105, 108 (Del. 1967).

¹² *See Young v. Saroukos*, 185 A.2d 274, 282 (Del. 1962). This Court has previously surveyed the continuing storm doctrine. *See Demby v. Delaware Racing Association*, 2016 WL 399136, (Del. Super. Ct. Jan. 28, 2016) and *Saienni v. 3 Mill Park Court LLC*, 2016 WL 7105945, (Del. Super. Ct. November 28, 2016).

¹³ *Id.* at 282.

¹⁴ Defendant's Motion for Summary Judgment at 3:5.

¹⁵ Plaintiff's Response at 2.

suggests the storm was not continuous, "there were multiple periods of time when no precipitation was falling."¹⁶ Plaintiff states there were periods of overcast, earlier in the day, according to the submitted weather report from 6:51 am – 9:51 am.¹⁷

7. This Court will grant summary judgment where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."¹⁸ The moving party bears the initial burden of showing that the undisputed facts make judgment appropriate.¹⁹ If that burden is satisfied, the burden shifts to the non-moving party to demonstrate that there are material issues of fact that must proceed to trial.²⁰

8. Here, Plaintiff testified under oath that it was raining when she exited the building.²¹ The weather data submitted by Plaintiff shows freezing temperatures all day.²² Her description of the weather conditions made it clear that she and her

¹⁶ Plaintiff's Response, at 2; Plaintiff's Response Ex. B.

¹⁷ Plaintiffs Response, at Ex. B.

¹⁸ Super. Ct. Civ. R. 56(c).

¹⁹ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

²⁰ *See Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

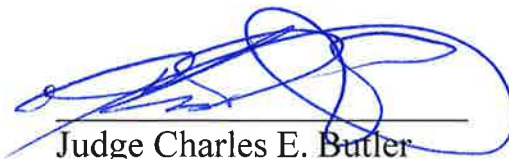
²¹ Defendant's Motion for Summary Judgement Ex. A, at 53:10; 54:6; 65:14; and 68:12.

²² Plaintiff's Response, Ex. B.

co-workers were aware that it was snowing and/or raining most of the day and the storm had not ceased.²³ Plaintiff went outside specifically aware of the continuing storm in order to warm up her car.²⁴ She put on her snow boots to protect from the accumulated snow and ice.²⁵ Plaintiff's exhibit shows continuous inclement conditions (various periods of light snow, ice and freezing rain) from 10:51 am and persisting well after 8:51 pm when Plaintiff fell.²⁶ There are no contested issues of material fact for a jury to decide. The evidence and deposition testimony show the storm had not ceased. Defendant's duty to remove accumulated snow or ice was not triggered until a reasonable time after the storm abated. Defendant is entitled to judgment as a matter of law.

9. For the reasons set forth herein, Defendant's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.



Judge Charles E. Butler

²³ *Id.*

²⁴ Deposition of Helena L. Garvin at 65.

²⁵ *Id.* at 66.

²⁶ Plaintiff's Response, Ex. B at 2.